United States Court of Appeals

for the Second Circuit

APPENDIX

#74-1886

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 74-1886

MERCU-R[illegible]STRIES, INC. AND
JAMES S[illegible]EAGER,

PLAINTIFFS

B

JAMES S[illegible]GER,

APPELLANT

[illegible]nst-

BRIST[illegible]NY,
CLAIR[illegible]
MIC[illegible]

P/S

DEFENDANT-APPELLEES

C[illegible]N E D A P P E N D I X

JAMES SCOTT KREAGER
APPELLANT PRO SE
350 EAST 30th STREET 1E
NEW YORK [illegible]RK 10016
TEL (2[illegible]) 68[illegible]54

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PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE DUFFY

Jury demand date:

D. C. Form No. 106 Rev. by pltffs. 10-2-73 by pltff Kreager 10-29-73

73 CIV. 3225

TITLE OF CASE	ATTORNEYS
Mercu-Ray Industries, Inc., James Scott Kreager vs. Bristol-Myers Company Clairol, Inc. Michael S. Schwartz.	For plaintiff: ~~James Scott Kreager~~ ~~Plaintiff Pro Se~~ ~~350 East 30th St.~~ ~~New York, N.Y. 10016~~ ~~683-5446~~ ~~Ascher & Goldstein~~ (8-10-73) ~~105-10 Queens Blvd.~~ ~~Kew Gardens, N.Y. 11415~~ ~~544-8665~~ JANES SCOTT KREAGER PLTFF PRO SE. 350 EAST 30th STREET NEW YORK, N.Y. 10016 683-5446 For defendant: WEIL, LEE & BERGIN 60 East 42nd St-NYC 10017 MU 7-8573

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		9/24/73	JC Kreager	15 —	
			9/24/73	P S Thomas	—	15 —
J.S. 6 mailed	Marshal					
Basis of Action:	Docket fee					
herman-Clayton Act.	Witness fees					
Action arose at:	Depositions					
		+1 —				

MERCU-RAY INDUSTRIES,INC. v BRISTOL MYERS, CLAIROL

JUDGE D

(PAGE #2)

73 CIV. 322

DATE	PROCEEDINGS	Date Order Judgment No.
Jul 23-73	Filed complaint and issued summons.	
Jul 30-73	Filed summons with marshals ret, Served Bristol-Meyers Co. on 7/25/73 also served Clairol, Inc. on 7/25/73	
Jul 31-73	Filed defts' notice of motion, Re: dismiss the complaint, ret before Duffy J. on 8/7/73.	
Jul 31-73	Filed defts' memo in support of its motion.	
Jul 31-73	Filed pltffs response to defts motion to dismiss.	
Aug 10-73	Filed notice of appearance by Ascher & Goldstein atty's for Mercu-Ray Industries atty. for pltff.	
Sep 28-73	Filed defts memorandum in support of defts motion to dismiss the complaint.	
Oct 1-73	Filed Order tjat defts have judgment against the pltff dismissing the complaint with leave to him to replead within ten days hereof. Clerk. M/N.	
Oct 1-73	Filed memo endorsed on motion filed 7-31-73. Motion to dismiss as against the pltff Mercu -Ray Industries, Inc. is denied. Motion to dismiss as against the pltff Kreager is granted with leave to replead within ten days hereof, So ordered Duffy J.	
Oct. 2-73	Filed amended complaint.	
Oct. 2-73	Filed pltff's notice for trial by jury	
Oct. 2-73	Filed pltffs' affdvt. and notice of motion for an order to replead, add Michael S. Schwartz as a deft. and file an amended summons adding Michael S. Schwartz as a party deft.	
Oct. 2-73	Filed memo endorsed on motion filed 10-2-73. Leave to file and amended complaint is granted. The leave to file the pleading granted hereby is not to be construed as a prejudgment of any such motions. DUFFY, J. mailed notice	
Oct.16-73	Filed afdvt.& notice of motion by pltff's atty. to be relieved as counsel.	
Oct. 18-73	Filed affdvt. and notice of motion by James Scott Kreager, pltff. pro se, for an order to hold certain attorneys in contempt of court and fine $5,000. each, as indicated. Ret. 10-26-73.	
Oct. 18-73	Filed pltff. James Scott Kreager's reply affdvt. to counsel's motion to withdraw.	
Oct. 19-73	Filed Memo Endorsed on motion papers filed 10-16-73. Motion granted. DUFFY, J. mailed notice	
Oct. 24-73	Filed defts' affdvt. and notice of motion for an order dismissing the amended complaint. Ret. 11-2-73.	
Oct. 24-73	Filed defts. affdvt. by Alfred T. Lee in opposition to motion to punish for contempt.	
Oct. 24-73	Filed defts' memorandum in support of motion to dismiss the amended complaint.	
Oct. 25-73	Filed order extending defts' affdvt. by Alfred T. Lee for thirty days. So ordered- DUFFY, J. mailed notice.	
Oct 26-73	Filed memo endorsed on motion filed 10-18-73. Motion denied, Duffy, J. M/N.	
Oct 26-73	Oral Motion to transfer case to another circuit is also denied, Duffy, J.	
Oct 26-73	Filed Kreagers Reply Affidavit in support of motion to punish for contempt.	
Oct. 29-73	Filed pltff. James Scott Kreager's amended notice of demand for trial by jury.	
Nov. 7-73	Filed pltff. James Scott Kreager's affirmation pf prejudice and notice of motion for an order that USDC Kevin T. Duffy submit action to be reassigned to another DC Judge. Ret. 11-9-73.	
Nov. 12-73	Filed memo endorsed on motion filed 11-7-73. MOTION denied. DUFFY, J. mailed notices.	
Nov. 21-73	Filed pltff. James Scott Kreager's notice of motion for an order to change title of action. Ret. 11-23-73.	
Nov. 21-73	Filed pltff. James Scott Kreager's affdvt. in support of motion to change title of action.	
Nov. 21-73	Filed pltff's memorandum in opposition to deft's motion to change title of action.	
Nov. 26-73	Filed affdvt. of Elihu Inselbuch dated 11-20-73.	
Dec. 3-73	Filed pltff. James Scott Kreager's affdvt. in reply to defts. memorandum in opposition to change title of action.	
Dec. 3-73	Filed pltff James Scott Kreager's affdvt. in answer to defts. Clairol, Inc. and Bristol Myers on to dismiss complaint.	

DUFFY, J.

DATE	PROCEEDINGS
March 25-74	Filed pltff. James Scott Kreager's affdvt. and notice of motion for a protective order. Ret. 4-5-74.
March 25-74	Filed pltff. James Scott Kreager's notice of taking depogitions of defts. Bristol Myers Co. and Clairol, Inc. by Richard L. Gelb and deft. Michael S. Schwartz on 4-9-74.
March 25-74	Filed pltff. James Scott Kreager's notice of taking depositions of the corporate officers and directors of deft. Bristol-Myers Co., the names as listed, on 4-15-74.
April 1-74	Filed defts. Bristol-Myers Co. and Clairol, Inc's answering affdvt. of Alfred T. Lee.
April 5-74	Filed pltff. Kreager's affdvt. and notice of addendum of motion for a protective order. Ret. 4-26-74.
Apr. 5-74	Filed pltff. James Scott Kreager's notice of taking depsositions of Frank Sprole and William Armswood on 5-1-74.
Apr. 9-74	Filed pltff. James Scott Kreager reply affdvt.
May 14-74	Filed pltff.'s James Scott Kreager affdvt. and notice of motion for an order granting said pltff. judgment against deft. Michael S. Schwartz. Ret. 5-24-74.
Jun26-74	Filed memorandum and order : that havin dismissed all four counts in the complain all of the sundry motions filed by the pltffs since the defts motion to dismiss ar now mooted except the pltffs requests: (1) that I recuse myself myself from this case since I am "in collusion with "udge Weinfeld of this Court to deprive pltffs of their rights: and (2) that the questions arising out of this case be immediatel certified to the United States Supreme Court for determination. As to these motions they are denied in all respects. So Ordered, Duffy, J.

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MERCU-RAY INDUSTRIES, INC., JAMES SCOTT KREAGER, Plaintiffs, -against- BRISTOL-MYERS COMPANY, CLAIROL, INC., MICHAEL SCHWARTZ, Defendants.	:	MEMORANDUM AND ORDER 73 Civ. 3225

APPEARANCES:

JAMES SCOTT KREAGER, Pro Se
For Plaintiffs

WEIL, LEE & BERGIN, ESQS.
Attorneys for Defendants
By Alfred T. Lee, Esq.
Of Counsel

KEVIN THOMAS DUFFY, D.J.

The complaint in this case alleges that violations of the federal antitrust laws, 15 U.S.C. §§ 1, 2 & 15, prevented the corporate plaintiff from exploiting its patented sign device and prevented the individual plaintiff, as officer and sole stockholder of the corporate

plaintiff, from obtaining the profits and use thereof. This case is related to two other cases which have recently been affirmed by the Second Circuit on a consolidated appeal. Kreager v. General Elec. Co., F.2d (slip op. 3455) (2d Cir. May 13, 1974). In one of those consolidated cases (68 Civ. 944) a jury trial had resulted in a verdict for the defendants and I dismissed the other (73 Civ. 2863) as barred by res judicata.

In the present case the defendants moved to dismiss on the grounds that the corporate plaintiff was not represented by counsel and that the individual plaintiff failed to state a cause of action. When on the argument of this dismissal motion the corporate plaintiff was represented by counsel, that portion of the motion was denied and the individual plaintiff was granted leave to replead his causes of action. An amended complaint was thereafter served and filed but the plaintiff corporation's counsel has withdrawn from the case in an acrimonious dispute with the individual plaintiff.

The defendants again move to dismiss the complaint because the corporate plaintiff is not represented by counsel and the repleaded complaint still fails to set out claims upon which the individual plaintiff can recover.

The law is absolutely clear that a corporation cannot appear pro se in federal court. In re Highley, 458 F.2d 554, 555 (9th Cir. 1972); United States v. 9.19 Acres of Land, Marquette Co., Mich., 416 F.2d 1244, 1245

(6th Cir. 1969); Shapiro, Bernstein & Co. v. Continental Record Co., 386 F.2d 426, 427 (2d Cir. 1967). The individual plaintiff has attempted to obviate the fact that his corporation is not represented by counsel by assigning all rights in the corporate causes of action to himself and then pressing those claims pro se. In order to effectuate this plan the individual plaintiff has made a motion to change the title of the action from Mercu-Ray Industries, Inc., plaintiff, to James Scott Kreager, plaintiff.

Kreager had made a similar motion before the Second Circuit when the two cases referred to above were pending on appeal and that motion was granted for the purpose of allowing him to argue the appeal pro se. Kreager now argues that the Second Circuit order of November 7, 1973, granting the motion, controls this case and that I have no choice but to approve the change in title. Defendants, however, argue that the November 7, 1973 order has no precedential value because it was granted only for the purposes of the appeal and only in the absence of any opposition. The relevant portion of the disputed order provides:

> It is hereby ordered that the motion made herein by James Scott Kreager pro se to amend the party appellant in this action and change the title to James Scott Kreager v. General Electric Company et al,

be and it hereby is granted pursuant to Fed. R. App. P. 43, without prejudice to appellees' rights to contest the validity or effectiveness of the alleged assignment . . . . (emphasis added)

Though the Court of Appeals by the above underlined language specifically preserved the right of the appellees to contest both the validity and effectiveness of the assignment, none of the appellees did contest it "for reasons of their own". Affidavit of E. Inselbuch, p. 2 (Nov. 20, 1973). In light of the Second Circuit's explicit reservation of the appellees' right to contest the assignment and in light of the appellees' failure to accept this invitation, I find that the order of November 7, 1973, permitting Kreager to change the title and appear pro se in the appellate court on a related case was not a determination on the merits and is therefore not controlling in this case where the defendants do contest the "effectiveness" of the assignment.

The "validity" of the assignment, i.e., the following of proper corporate procedures and the giving of consideration, is not challenged by the defendants and, therefore, for the purpose of these motions I will assume that the assignment was properly executed. Further, the law is settled that a treble damage antitrust claim can be assigned.

D'Ippolito v. Cities Service Co., 374 F.2d 643, 647 (2d Cir. 1967); Hicks v. Bekins Moving & Storage Co., 87 F.2d 583, 585 (9th Cir. 1937); United Copper Securities Co. v. Amalgamated Copper Co., 232 F. 574, 577-78 (2d Cir. 1916); Isidor Weinstein Investment Co. v. Hearst Corp., 305 F. Supp. 646, 649 (N.D.Cal. 1969).

The facts and law set forth above present the following question: Should a corporation be permitted to thwart the public policy of not allowing it to appear pro se by the procedural technicality of an assignment of the claim to its sole stockholder?

Though federal law is controlling in this antitrust suit, Isidor Weinstein Investment Co. v. Hearst Corp., supra, at 648-49, no federal case directly on point could be found nor was any cited by the parties. However, dicta in an opinion of the United States Court of Appeals for the District of Columbia does address this question. On grounds of policy, but without citation, the court there stated:

> "It cannot be doubted, we think, that an assignment of a claim against another, made solely for the purpose of permitting the assignee--not an attorney--to conduct the litigation in proper person, would be colorable only and, therefore, insufficient to accomplish the purpose . . . ."

Heiskell v. Mozie, 82 F.2d 861, 863 (D.C. Cir. 1936). Since the facts in Heiskell showed an agency and not an

assignment and, further, since the agent in Heiskell was not the real party in interest, the case could be distinguished. Its dicta is, nevertheless, the closest federal authority on the question presented here.

State law, while more directly on point, is in conflict. In 1972 the Appellate Division of the New York Supreme Court held that a corporation could assign a chose in action to its sole stockholder even though the sole purpose of the assignment was to circumvent the statutory prohibition against corporations appearing pro se. Kamp v. In Sportswear, Inc., 39 App. Div. 2d 869, 332 N.Y.S. 2d 983 (1st Dep't 1972). In reaching this per curiam decision the Appellate Division reversed the judgment below (70 Misc.2d 898, 335 N.Y.S. 2d 306) and relied exclusively on the two paragraph dissent of Mr. Justice Lupiano. The gist of this dissent was that if the assignment was technically valid the motive underlying it was immaterial. The New York court did not discuss Biggs v. Schwalge, 341 Ill. App. 268, 93 N.E.2d 87 (1st Dist. 1950), a case based on nearly identical facts, in which the Appellate Court of Illinois reached a directly contrary result. In Biggs the sole stockholder of a corporation routinely had the corporation's claims assigned to him and he litigated the cases pro se. When the defendant in one of those cases moved to strike the complaint, the court "first urged and finally ordered

plaintiff to employ an attorney". When the plaintiff refused to do so the complaint was dismissed. In affirming the dismissal the Appellate Court stated:

> "Being in control of the corporation, [plaintiff] takes assignments of its claims for the purpose of indulging his desire to practice law. It is a compliment to the profession that it should have this irresistible attraction for some laymen, but the law is clear and in our opinion the order of the trial court was correct."

See also People ex rel. Chicago Bar Ass'n v. Tinkoff, 399 Ill. 282, 77 N.E.2d 693 (1948); Remole Soil Service, Inc. v. Benson, 68 Ill. App.2d 234, 215 N.E.2d 678 (4th Dist. 1966).

Since there thus appears to be no per se rule on pro se representation by a sole stockholder-assignee, the policy behind requiring a corporation to appear by counsel assumes great significance. For example, if the purpose of the rule was to protect the stockholders of the corporation then in a case such as this where the assignee is the sole stockholder, there would seem to be less validity in forcing him to appear by counsel. A study of the relevant cases shows, however, that the policy behind the rule is not the protection of stockholders but the protection of the courts and the administration of justice. "The authorities in Federal Courts . . . are uniform in holding that a corporation can do no act except through its agents and that such agents representing the corporation in Court must be attorneys at law who have been admitted to practice,

are officers of the Court and subject to its control." MacNeil v. Hearst Corp., 160 F. Supp. 157, 159 (D.Del. 1958). In holding that a corporation could not be represented by its non-attorney president but would have to be represented by an attorney, the Third Circuit adopted the position of the district court judge who wrote: "The confusion that has resulted in this case from pleadings awkwardly drafted and motions inarticulately presented likewise demonstrates the wisdom of such a policy." Simbraw, Inc. v. United States, 367 F.2d 373, 375 (3d Cir. 1966). See also Brandstein v. White Lamps, Inc., 20 F. Supp. 369, 370 (S.D.N.Y. 1937).

Since the purpose of the rule requiring corporations to appear by an attorney is to ensure that the court has greater control over the management and administration of the case, that purpose would certainly be thwarted were Kreager permitted to prosecute this case pro se. The complaint alleges violations of both the Sherman Act, 15 U.S.C. §§ 1 & 2, and the Clayton Act, 15 U.S.C. § 15, as well as pendent "fraud" claims. The preparation and presentation of a multi-billion dollar antitrust suit generally presents even the most competent lawyer with great difficulties which require skill and expertise to overcome. Unfortunately, Kreager has failed to show either skill or expertise. To allow Kreager to appear pro se in this suit would be allow him to flout a

well-established and purposeful public policy by means of a procedural device. Kreager chose to accept the advantages of incorporation and must now bear the burdens of that incorporation; thus, he must have an attorney present the corporation's legal claims. Defendants' motions to dismiss Counts I and II of the complaint are granted.

In Count III Kreager seeks to recover for alleged antitrust violations which damaged him in his individual capacity as stockholder, officer and director. The defendants' motion to dismiss this count is granted because Kreager has no standing to assert these indirect private antitrust claims. Bookout v. Schine Chain Theatres, Inc., 253 F.2d 292 (2d Cir. 1958); Productive Inventions, Inc. v. Trico Products Corp., 224 F.2d 678 (2d Cir. 1955) cert. denied, 350 U.S. 936 (1956); Timberlake, The Legal Injury Requirements and Proof of Damages in Treble Damage Actions Under the Antitrust Laws, 30 Geo. Wash. L. Rev. 231, 243-46 (1961); Note, Standing to Sue for Treble Damages Under Section 4 of the Clayton Act, 64 Colum. L. Rev. 570, 581-88 (1964).

In Kreager v. General Elec. Co., __ F.2d __(slip op. 3455) (2d Cir. May 13, 1974) Judge Timbers specifically considered the question of Kreager's standing to assert the individual antitrust claims and concluded: "It is well settled that a stockholder is not a person injured in his business

or property within the meaning of the antitrust law. Kreager lacked standing to bring a private antitrust action to recover for damages allegedly sustained by his corporation." Id. at 3463.

The final count, Count IV attempts to assert claims of "fraud and deceit" on behalf of Kreager as individual. This count contains only conclusory allegations of fraud and is therefore dismissed pursuant to Rule 9(b) of the Federal Rules of Civil Procedure which mandates that "the circumstances constituting fraud . . . shall be stated with particularity".

Having dismissed all four counts in the complaint, all of the sundry motions filed by the plaintiffs since the defendants' motion to dismiss are now mooted except the plaintiffs' requests: (1) that I recuse myself from this case since I am "in collusion" with Judge Weinfeld of this Court to deprive plaintiffs of their rights; and (2) that the questions arising out of this case be immediately certified to the United States Supreme Court for determination. As to these motions they are denied in all respects.

SO ORDERED.

U. S. D. J.

Dated: New York, New York
June 25, 1974.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MERCU-RAY INDUSTRIES, INC. AND
JAMES SCOTT KREAGER,
APPELLANTS

V.

BRISTOL-MYERS COMPANY
CLAIROL, INC.,
MICHAEL S. SCHWARTZ,
DEFENDANT- APPELLEES.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK

CASE NO. 73-3225 (K.T.D.)

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

73 CIVIL 3225 (K.T.D.)

MERCU-RAY INDUSTRIE, INC. AND
JAMES SCOTT KREAGER,
APPELLANTS

V"

BRISTOL MYERS COMPANY
CLAIROL, INC.,
MICHEL S. SCHWARTZ.,
DEFENDANT-APPELLEES

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~~ORAL MOTION TO TRANSFER CASE TO ANOTHER CIRCUIT DENIED~~

October 3, 1973

Abbey Goldstein, Esq.
Ascher & Goldstein
125-10 Queens Boulevard
Kew Gardens, New York

Re: Mercu-Ray Industries, Inc., James Scott Kreager v. Bristol-Myers Company, Clairol, Inc.

Dear Mr. Goldstein:

As I observed in Court on August 10th during oral argument before Judge Duffy, the subscription by an attorney to a pleading constitutes his certification that there are good grounds to support its allegations. The Rule also puts responsibility upon the signatory attorney for scandalous or indecent matter. (Rule 11FRCP).

When you addressed the Court, you indicated that you would be prepared to sign the complaint in its then current form and that you would satisfy the requirements of Rule 11 by reliance upon what Mr. Kreager had told you.

Last week Mr. Kreager gave me a copy of a proposed amended complaint which obviously he had drafted on behalf of your client, the plaintiff corporation and, presumably, to be signed by you on its behalf. In that complaint, he repeats essentially the same charges of criminal conduct (perjury, subornation of perjury, etc.) as were in the initial pleading. Those charges are not only directed to highly responsible business executives but to two members of the Bar of impeccable reputation.

We are satisfied that there is not a shred of evidence to support any of those accusations and we do not believe that Rule 11 is observed simply by relying upon the wholly unsupported statements of Mr. Kreager who failed to persuade the jury in the case of Mercu-Ray v. General Electric.

Regarding Rule 11, it has been said that

"An affirmative obligation is thus cast upon the attorney signatory to the pleading that he be satisfied in good faith that there is good ground to support the claim asserted therein".

Freeman v. Kirby, 27 FRD 395 (S.D.N.Y. 1961).

"...the signature of the lawyer carrying with it certain responsibilities, is much more important and worth while than an path or verification...".

Proceedings of the Institute on the Federal Rules of Civil Procedure at Washington, D.C. (1938) page 52.

"Yet, as the Rule at the very least implies, the signature of an attorney or law firm on a federal civil pleading amounts to a certificate by that signer that there are good grounds to support the pleading. As has been held by this Court before, Rule 11 casts an affirmative obligation upon counsel who signs a pleading to represent his honest belief that there are facts and law to support the claims asserted in that pleading".

Heart Disease Research Foundation v. General Motors Corp., 15 FR Serv. 2d 1517 (S.D.N.Y. 1972).

It might be noted, that the signatory attorney in the latter case - where the complaint was dismissed upon the alternative ground of failure to comply with Rule 11 - was the same attorney who represented Mr. Kreager in a trial of Mercu-Ray against General Electric.

Even apart from Rule 11, FRCP, the Code of Professional Responsibility places further duties upon attorneys. For example:

"(C) In appearing in his professional capacity before a tribunal, a lawyer shall not: (1) state or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence." Disciplinary Rule, 7-106 (C)(1).

Abbey Goldstein, Esq. October 3, 1973

Baseless, abusive, reckless or scandalous attacks upon attorneys and other judicial officials are not only "disapproved" Mariano v. Goldberg, 102 N.Y.S. 2d 669 (2nd Dept., Sp. Term, 1950), but may warrant suspension from the Bar, Baker v. Monroe County Bar Association, 34 A.D. 2d 229, 311 N.Y.S. 2d 70 (4th Dept. 1970), aff'd, 28 N.Y. 2d 977 (1971); In re Greenfield, 24 A.D. 2d 691, 262 N.Y.S. 2d 349 (2nd Dept. 1965); In re Devans, 225 App. Div. 427, 233 N.Y. Supp. 439 (3rd Dept. 1929). Moreover, an attorney does not gain any privilege or immunity by virtue of the fact that such matter are inserted in a pleading, In re Devans, supra.

Should the charges we referred to above be repeated in any further pleading filed by you, we propose to promptly test the factual support therefor by written interrogatories and other discovery.

Very truly yours,

ATL:nn

AFFIDAVIT OF SERVICE

JAMES SCOTT KREAGER, BEING DULY SWORN, DEPOSES AND SAYS:

THAT ON THE 3rd DAY OF SEPTEMBER,1974 HE SERVED A TRUE COPY OF THE ATTACHED COMBINED APPENDIX IN DOCKET NO. 74-1886 IN THE MATTER OF MERCU-RAY INDUSTRIES, INC. AND JAMES SCOTT KREAGER, PLAINTIFFS, JAMES SCTT KREAGER, APPELLANT VS: BRISTOL-MYERS COMPANY, CLAIROL, INC. AND MICHEL S. SCHWARTZ, DEFENDANT-APPELLEES BY PERSONAL SERVICE UPON THE ATTORNEYS FOR BERISTOL-MYERS COMPANY AND CLAIROL, ICN. NAMELY WEIL, LEE & BERGIN ESQS. AT 60 EAST 42nd STREET, NEW YORK, NEW YORK AND BY LEAVING A COPY OF SAME AT 432 PARK AVENUE SOUTH AT THE MAILING ADDRESS AND/OR OFFICES OF DEFENDANT-APPELLEE MICHEL S. SCHWARTZ.

James Scott Kreager

JAMES SCOTT KREAGER
APPELLANT PRO SE

SWORN TO BEFORE ME THIS
3rd DAY OF SEPTEMBER,1974.

Joseph J. Bambace

JOSEPH J. BAMBACE
Notary Public, State of New York
No. 31-5165805
Qualified in New York County
Commission Expires March 30, 1976

Received 9/3/74.
With Alex Bergin.
Nancy Kellogg